# THE RECORD
# OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

Harrison Tweed, *President* | Paul B. De Witt, *Executive Secretary* | Charles H. Strong, *Secretary*

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## Association Activities

The Secretary of the Association, Charles H. Strong, has made known his desire not to be renominated. It seems appropriate for the Secretary to tell his story in his own words and to publish also the President's reply to Mr. Strong's letter:

My dear Mr. Tweed:

It just occurs to me that presidents of The Association of the Bar of the City of New York come and go and secretaries hang on forever.

There is no rule or by-law or constitutional provision that prevents this, so something must be done by a secretary on his own initiative.

A glance at the yearbook discloses that in the seventy-five years of the life of the association there have been thirty-three presidents. In the same period there have been only four recording secretaries. The present incumbent has served as recording secretary from 1917 to 1923 and as secretary from 1923 to the present time—twenty-nine years out of seventy-five.

I would have it known to the Nominating Committee that I do not desire to be renominated. Will you kindly tell them. My term of office, therefore, will expire with the annual meeting.

Under your leadership it is already evident that the association is entering upon a period of distinguished service to the city and state of New York.

Sincerely yours,

CHARLES H. STRONG
*Secretary*

Dear Mr. Strong:

I had just begun to think that things were going fairly well in the Association. Then your letter came saying that you do not wish to be re-elected as our Secretary at the Annual Meeting as you have been every year for the last twenty-nine years. This is bad news for all of us—the officers, the committees, and the members. In our subsequent talk you convinced me that your decision is final, so I suppose that we must accept it.

No one except Silas Brownell ever served the Association so long as you and no one more devotedly. For the Association and every one of its members let me express, however inadequately, our gratitude for your unique service, our personal regard and our confident hope that your interest in the Association will continue unabated and that we may call on you for advice and counsel as we carry on the work in which you have had so large a part.

Yours very sincerely,
HARRISON TWEED

THE SEVENTY-FIFTH ANNIVERSARY of the Association will be celebrated at a Special Meeting to be held March 16 in the House of the Association. As a tribute to the Association's distinguished leadership in "cultivating the science of jurisprudence, promoting reforms in the law, facilitating the administration of justice, and elevating the standard of integrity, honor and courtesy in the legal profession," the Chief Justice of the United States, the Honorable Harlan Fiske Stone, will attend the Special Meeting. Two former presidents of the Association, C. C. Burlingham and John W. Davis, will speak. In this number of THE RECORD will be found statements by William J. O'Shea and Otto C. Wierum on the significance of this Anniversary of the Association.

ON JANUARY 25 the Executive Committee adopted a resolution condemning the appointment by certain justices of the Supreme Court of non-lawyers as their secretaries. The resolution calls for legislation which would require that secretaries to the justices

be lawyers. The proposed legislation would also apply to secretaries to judges of the Court of General Sessions, the County Court, and the City Court of the City of New York.

Although the action of the Executive Committee followed closely on two recent appointments of non-lawyers as secretaries to justices of the Supreme Court, the Association's policy of disapproval of such appointments has been established since 1939 at least. And more recently legislation has been sought by the Association to curb such practices. The report which was the basis of the Executive Committee's action, and which is published in this number of THE RECORD, indicates that at the present time in the first judicial district of the Supreme Court three of the justices have non-lawyers as their secretaries. Out of nine secretaries in the Court of General Sessions only four are lawyers although the secretaries receive from $5,700 to $6,100 per year. In the City Court only one of the twenty-two secretaries is a lawyer.

The stand taken by the Executive Committee was vigorously supported by editorials in the *New York Times,* the *New York Herald-Tribune,* the *World-Telegram,* and the *Journal-American. The Journal-American* in its editorial said in part:

> Appointing as a judicial secretary political district leaders who have had no legal training certainly injects politics into the courtroom and deprives the judges themselves of the kind of aid they should have. . . The spoils of office very frequently spoil the offices.

On January 29 the City Club of New York through its Board of Trustees adopted a resolution supporting what Bertram Boardman, chairman of the Board, called "this needed reform in the administration of justice." The Citizens Union also approved the action of the Association and other civic organizations have indicated they will support legislation to remedy the situation.

The resolution, as adopted by the Association's Executive Committee, read as follows:

> WHEREAS it has come to the attention of the Executive Committee of the Association of the Bar of the City of

New York that certain of the justices of the Supreme Court, justices of the Court of General Sessions and judges of the County Court and the City Court of the City of New York have resorted to the practice of appointing secretaries who are not members of the bar, and

WHEREAS it is the opinion of the Executive Committee that such a practice not only tends to impede the efficient administration of justice but also to undermine the confidence of the people of the State of New York in the integrity of their courts,

BE IT RESOLVED that the Association of the Bar of the City of New York condemns such a practice and recommends to the legislature that the laws be amended to require the appointment of secretaries who are members of the bar, and that such secretaries devote their entire time to the duties of their office.

THE ASSOCIATION'S Stated Meeting of February 13 was devoted to an agenda of exceptionally important matters. The resolutions as adopted at the meeting will be found in another section of this number of THE RECORD. The action that received the widest notice in the press was the Association's stand against the Case Bill now before the Congress. The report of the Committee on Labor and Social Security Legislation, of which Morrell S. Lockhart is chairman, condemns the bill as "hastily drafted and hastily considered..." The full report of the Committee wil be found in the Committee Reports section of THE RECORD. Equally important are the six resolutions submitted by the Labor Committee on principles involved in labor legislation. They deal with such matters as fact finding boards, cooling off periods, compulsory arbitration, and democratic procedures in unions.

Two proposals for the improvement of the administration of justice were approved at the stated meeting. Acting upon a report by the Association's Law Reform Committee the Association voted to uphold the principle that no one, while holding any judicial office in the State of New York, ought to be permitted to

become a candidate for any office other than a judicial office. Thus, the Association goes on record as favoring the application of Canon 30 of the Canons of Judicial Ethics to all judges in the state and the amendment of Article VI, Section 19 of the Constitution so that it will be consistent with the requirement of Canon 30.

The Association also voted to support the proposal of the Citizens' Committee on the Courts, Inc. for a constitutional amendment which would set up a "court of the judiciary" for the removal and retirement of judges. This proposal is now before the legislature in the form of a concurrent resolution introduced by Senator Williamson and Assemblyman Reoux. An explanation of the proposal has been sent to every member of the Association. Appearing before the stated meeting in support of the resolution adopted were Judge Samuel Seabury, president of the Citizens Committee on the Courts, and Kenneth M. Spence of the Board of Directors of the organization.

As THE President stated in his letter published in THE RECORD for February the Association is making every effort in behalf of lawyer veterans who wish to come back into the practice of law. Interest in the placement of veterans has been greatly intensified by reason of the rapidly increasing number of applicants for assistance, by the decline of opportunities for employment in law offices, and by the obvious need of many lawyer-veterans for more effective employment assistance. Although the placement office is a function of the organized bar of the whole City of New York, it was decided by the Executive Committee that it should take steps to enlarge and improve the service. To this end a subcommittee of the Executive Committee conferred on several occasions with Charles E. Hughes, Jr., Robert E. Lee, and Mason Bigelow of the War Committee and thereafter recommended that the Executive Committee authorize the removal of the placement office from the sixth floor of the Bar Building to suitable space on the first floor of the House of the Association. Such au-

thority having been granted, the room behind the reception desk at the 44th Street entrance is now used for interviews, and the second room on the right from the 44th Street entrance is used as a waiting room and for clerical work connected with the placement office. In addition, the Executive Committee has encouraged the War Committee to increase the staff employed in this work and has authorized an advance of $1000 to the War Committee against receipts by the Committee from a proposed further solicitation of funds—this to enable the War Committee to proceed at once to employ additional help in the placement office. The President also has appointed a committee of ten members of the Executive Committee to assist the War Committee in a personal canvass of banks, insurance companies, industrial concerns and the like for employment opportunities for legally trained veterans.

THE COMMITTEE on Medical Jurisprudence, of which John Kirkland Clark is the chairman, will cooperate with a special committee of the American Bar Association on a study of existing laws safeguarding the rights of the mentally ill.

A COMPREHENSIVE report on the selection of jurors in the City Court is being prepared by a sub-committee of the Association's Committee on City Courts. The report will be published in an early number of THE RECORD. The Committee on the City Court is continuing its program to promote the use of pre-trial and is also preparing a report on the plans for a new building to house the City Court.

THE COMMITTEE on Copyright, Robert P. Myers, chairman, is continuing its study of the latest draft of the proposed Pan-American Copyright Convention. Recommendations in respect to the Convention will probably be made before the end of the year. A second project of the Committee is the preparation of a report on the design copyright problem.

Last year the Committee on Copyright broke new ground when it arranged for a course on copyright by the Practising Law Institute. The response was excellent, and plans are being made for a similar course to be repeated next year. The Copyright Committee also is analyzing all pending legislation and filing its recommendation on each bill with the Congress.

THE COMMITTEE on Federal Legislation, John E. F. Wood, chairman, has indicated its approval of S. 97 now pending before the Congress. The bill would permit the United States to be made a party defendant in two types of actions: partition of real estate and sale of decedents' property. The Committee's report points out that "with proper safeguards, this legislation enlarging the consent of the United States to be sued is a welcome addition to the statute books." The report will not be published, but a few additional copies are available for distribution.

ON FEBRUARY TENTH about 500 members of the Association and their guests enjoyed a recital given by the well-known tenor, Lanny Ross, who was assisted by the American String Quartet.

In connection with the musicale the Committee on Art, of which G. Franklin Ludington is chairman, mounted in the Supper Room of the House an exceptionally interesting show of Eighteenth Century prints dealing with law and lawyers. The prints are the generous gift of Barnett Hollander who has given the Association the fine collection of Spy cartoons which hang in the reading room on the first floor of the House.

UNDER the auspices of the Committee on Post-Admission Legal Education, Theodore Kiendl delivered on February nineteenth a lecture on "Some Aspects of Cross Examination." A second lecture in the series will be delivered by the Honorable Edward S. Dore on March nineteenth. Judge Dore's subject is "Human Rights and the Law." The Committee on Post-Admission Legal

Education, of which Keith Lorenz is chairman, is also making plans for the publication of the Cardozo lecture delivered in December by the Honorable Charles E. Clark. Judge Clark's lecture will also appear in the *Yale Law Journal.*



As a fitting climax to the entertainment program of the Association an "Association Night" will be held on March 28. There will be a dinner and a great show. The details of all this are to be announced in a style worthy of the occasion. It can be said, however, that each member will be allowed one guest and thus plans for making early reservations are in order. The announcement will give details as to reservations.



The committees on administrative law of the New York State Bar Association and The Association of the Bar have issued a joint report on the McCarran-Sumners Bill. Robert M. Benjamin acted as chairman of the joint drafting committee. Since the report has been printed and given wide distribution it will not be republished. Copies, however, can be secured from Cloyd Laporte, chairman of the State Bar's committee, or from Alfred Jaretzki, Jr., chairman of the Association's committee.

In this number of the record will be found a report by the Association's Committee on Unlawful Practice of the Law, of which L. Reyner Samet is chairman. This report also deals with the McCarran-Sumners Bill, but is confined to a study of Section 6 (a) only. This section sets out the requirements for practice before administrative agencies.



In the committee Reports section of this issue will be found the opinion of the Committee on Professional Ethics which defines the limits to which professional announcements must be confined. The opinion is of particular importance to those attorneys who are returning to the practice from government service.

# The Calendar of the Association for March

(as of February 15, 1946)

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| March 4 | Meeting of Section on Labor Law of the Committee on Post-Admission Legal Education |
| March 5 | Meeting of Committee on State Legislation |
| March 6 | Dinner Meeting of Executive Committee<br>Meeting of Section on Wills, Trusts and Estates of the Committee on Post-Admission Legal Education |
| March 7 | Dinner Meeting of Committee on Taxation |
| March 12 | Meeting of Section on Corporations of the Committee on Post-Admission Legal Education<br>Meeting of Committee on State Legislation |
| March 16 | Special meeting in honor of the Seventy-Fifth Anniversary of the Association at 3 P.M.<br>Speakers—Chief Justice Harlan F. Stone, Charles C. Burlingham, Esq., John W. Davis, Esq., and Louis Waldman, Esq. |
| March 18 | Meeting of Section on Trials of the Committee on Post-Admission Legal Education |
| March 19 | Address on "Human Rights and the Law" by Hon. Edward S. Dore, Justice of the Appellate Division of the Supreme Court of the State of New York. Auspices of the Committee on Post-Admission Legal Education<br>Meeting of Committee on State Legislation |
| March 20 | Meeting of Section on Federal Practice of the Committee on Post-Admission Legal Education |
| March 21 | Meeting of Committee on Professional Ethics |
| March 25 | Meeting of Library Committee<br>Round Table Conference preceded by dinner of the Special Committee on Round Table Conferences |
| March 26 | Meeting of Section on Taxation of the Committee on Post-Admission Legal Education<br>Meeting of Committee on State Legislation |
| March 27 | Meeting of Committee on Admissions |
| *March 28* | *Association Night. Astor Hotel* |

# Former Mayor La Guardia's Radio Broadcast of February 10

*As a result of the publicity given to the Association's stand on the appointment of secretaries to judges, former Mayor F. H. La Guardia devoted his Sunday noon broadcast of February tenth to the subject and to an attack on the Association. Printed below is a transcript of Mr. La Guardia's broadcast and the President's letter in reply.*

Now here is something else that is very interesting. You know for a long time I have been talking about the courts in New York City, and I haven't pulled my punches, and I don't intend to pull my punches today. I want to talk about the Bar Association of New York City. The Bar Association, you know, whatever one may say about it, is not dumb, but no one can accuse the Bar Association of the City of New York of having any courage.

I note that the Bar Association is protesting the appointment of two district leaders as secretaries to two newly elected judges. Now what hypocrisy, what sham, what pretense! So the Bar Association of the City of New York is waking up now and criticizing the appointment of two district leaders by two newly elected judges. Say, Bar Association, why didn't you protest the selection of these two judges by these same two district leaders? You didn't peep then, did you? No the Bar Association never peeps. It will send out a release once in a while, but did you, who are listening to me—did I—did anybody else have anything to say in the selection of these judges or any other judges? These same district leaders handpicked these judges, and the Bar Association knows it, and doesn't dare peep about it.

That is nothing. Some years ago over in Brooklyn, the Supreme Court wanted to give a job to a district leader. I think his territory is around Coney Island, and they created a new position of Chief Deputy Clerk or Special Deputy Clerk, and Commissioner Herlands of the Department of Investigation wanted to find out what his duties were. Do you think we were permitted to do it?

Not at all. The same court that created the job to give this district leader $9,000 a year issued an injunction against the Commissioner of Investigation inquiring what his duties were. Did the Bar Association complain then? They did not.

Do you remember some years ago when there was some scandal about the selection of some judge, and the Bar Association was going to do something about changing the method? Did they do anything? They did not. Will they be doing anything? They will not.

Do you remember about a year when a judge of the Appellate Division up in Albany was communicating with district leaders as to what he should do? Did the Bar Association do or say anything? Did they do anything? They did not. Will they do anything? They will not. If the Academy of Medicine would exercise the same kind of supervision and scrutiny over hospitals as the Bar Association of the City of New York does over the courts, the undertakers in this city would do a rushing business. So don't expect any help from the Bar Association of the City of New York. The people of this State should do something about changing the system of selection of judges and the removal of judges when found to be incompetent or dishonest.

Hon. F. H. LaGuardia,
30 Rockefeller Plaza,
New York 20, New York.

Dear Mr. LaGuardia:

In your broadcast on Sunday, February 10th, you said:

"The people of this State should do something about changing the system of selection of judges and the removal of judges when found to be incompetent or dishonest."

You are right and the Association of the Bar of the City of New York, and I, its President, agree with you 100 per cent.

But strange to say, the preceding four minutes of your broadcast were devoted to a bad tempered attack upon

the Bar Association, in which you grossly misrepresented the facts. This is introduced by the remark that "for a long time I have been talking about the courts in New York City and I haven't pulled my punches." You are right again. We have all heard you talking but, unfortunately, that is all that you have done. And in answering your attack I am not going to pull any punches either.

One of the things that you *have not done* in connection with the New York courts has been to consult with the Bar Association during your mayoralty in connection with the appointment of judges. This you refused to do. One result was the appointment by you of a man who it turned out was entirely unfit. The scandal was sufficient to impel you to the statement "when I make a mistake, it is a beaut." This is the only reported instance when you have admitted a lack of omniscience, but it is not the only instance of a "beaut" of a mistake. The present is just one more. But when a good friend of yours wrote giving you the facts and and an opportunity to correct your misstatements, you refused.

Another of the things that you *have not done* was to oppose the Democratic and American Labor Party candidate for a Supreme Court judgeship last Fall, Samuel Dickstein, whose lack of qualification was well known to everybody and was conspicuously pointed out in the press as a result of Bar Association action.

Two more things that you *have not done* are to approve the Williamson-Reoux joint resolution for a constitutional amendment creating a "court on the judiciary" to remove and retire judges which is supported by the Bar Association, as has been reported in the newspapers and to favor the modified "Missouri Plan" for the selection of judges, publicly advocated by the Citizens Committee on the Courts, Inc. The plan, like every other plan which can be suggested, has imperfections, but it certainly eliminates the hand-picking of judges by the district leaders which is what you particularly object to. The Citizens Committee on the Courts was set up by the Bar Association two years ago in order to secure the support of laymen as well as lawyers. Judge Samuel Seabury is the Chairman of it and he, as you know, is an ex-President of the Bar Association.

It would have been easy for you with your sponsored time on the air and your splendid radio voice to lend your aid to the support of these things which are designed solely to improve the caliber of our judges. You could have said a good word for some of them in your broadcast of February 10. But, instead, you devoted yourself to criticising the Bar Association. You said that it "is not dumb, but no one can accuse" it "of having any courage." May I repay the compliment—reversed? No one can accuse you of lacking courage but you certainly are dumb when it comes to Bar Association matters. The proof of it is that you could say that the Bar Association "never peeps" and that the public should not "expect any help from the Bar Association" in securing a change in the system of selecting and removing judges,—all in the face of the easily ascertainable facts that among other things:

(1) From 1911 to 1913, to go no further back, the Bar Association urged legislation for non-partisan ballots in in judicial elections. Bills to this end were introduced in the Legislature several times, but were defeated by the political organizations.

(2) In 1915 and 1921 the Bar Association presented to the Constitutional Convention and the Judicial Constitutional Convention, respectively, resolutions for the appointment of judges by the Governor instead of their nomination by the political parties. The proposals were rejected.

(3) In 1931 the Bar Association initiated the investigation of the Magistrates' Courts which directly resulted in the removal of several magistrates and indirectly led to the removal of Mayor Walker. This in turn opened the door to City Hall. But even then, you could not have gotten in without the devoted support of the initiators and leaders of that investigation, C. C. Burlingham and Samuel Seabury, both of whom are past Presidents of the Bar Association.

(4) In 1932 the Bar Association adopted the exhaustive report of its Judiciary Committee recommending appointment of judges by the Governor and in 1933 brought the recommendation to a vote on the floor of the annual meeting of the New York State Bar Association, where it was defeated.

(5) In 1937 the Bar Association presented to the Constitutional Convention by a sub-committee which appeared in person a proposal for a change in the method of selecting judges.

(6) In 1944 the Bar Association caused to be organized the Citizens Committee on the Courts, Inc. for the special purpose of securing statewide support for the adoption of a modified "Missouri Plan" for the selection of judges. This Committee, of which I am a member, is campaigning vigorously. It is also urging a constitutional amendment setting up a special court for the removal and retirement of judges, so that these matters will not be left solely to impeachment by the Legislature.

Since I have no radio sponsor I am sending a copy of this letter to The New York Times.

Yours very truly,

HARRISON TWEED

# The President's Letter

*To the Members of the Association:*

I should like to lay some of the problems of the Association before the membership. If I do not get you in on questions when they are in the trouble stage you cannot share the satisfaction which will come when they have been solved. And I am optimistic enough to think that most of our problems will be solved, although perhaps not today or tomorrow. I do not want to burrow into philosophical problems about the lawyer's place in society or the destiny of bar associations. I only want to tackle the obvious and practical problems which lie on the surface and those which concern the accepted activities of the Association. These activities fall into several categories, as expressed by the various committees. First there are the administrative committees, which have to do with admissions, finance, entertainment, membership and the operation of the building. Next there are the committees designed to aid in the selection of judges and the administration of justice by the courts. Then there are the committees which suggest or pass upon state and federal legislation or have to do with some branch of the law, such as aeronautics, labor and taxation. Finally, there are the so-called public service committees, such as the Committee on Grievances, Unlawful Practice of the Law, Professional Ethics, Legal Aid and Post-Admission Legal Education.

The problems which I want to lay before you are how to get (1) most of the membership at least mildly interested in Association activities, (2) an increased number of the membership enthusiastically engaged in the Association activities, (3) the work of the Association done more efficiently and known more accurately and favorably by the public and (4) new activities started.

1. I do not see how any organization can be worth its salt unless most of its members take at least a mild interest in it. The mere payment of dues is not enough except in an organization where all the work is done by a salaried personnel. Ours is not that sort of an organization. Indeed, we are very much undermanned and

most of our work is done by volunteers. Unless there is a genuine interest on the part of the membership, how can there be any real public influence? It is the knowledge that there is a large and alert membership which carries weight in the community. Furthermore, it is from the ranks of interested members that the active workers must be recruited, so that the more interested members there are the more active members there will be. Finally, members cannot be expected to work hard on committees unless they feel that their work is appreciated and supported by the membership generally.

The Entertainment Committee and I have thought that entertainment, including food and drink, will make our members conscious of the existence of the Association and their membership in it. We are furnishing quite a good deal of it. The response to our offerings has been enthusiastic. We hope that one result will be a greater realization of the charter purpose of "cherishing the spirit of brotherhood" among the members. Furthermore, it should stimulate discussion among the members about the Association, its hopes and fears and aspirations. It might even get members in such a habit of coming to the House of the Association that they will come in large numbers to the stated meetings. At the December meeting there were not more than 60 members present. Notwithstanding the intriguing agenda for the February meeting, the attendance was less than 100. This was a great disappointment to me. It is at meetings that the real business of the Association is transacted. Members do not attend meetings because they are not interested in the activities of the Association. Only if their interest is stimulated will they come to meetings. It is true that there have been many dull meetings, but no meeting at which members turn out in force can be very dull, and at least would offer opportunity to talk with friends and grouse about the world in general and the Association in particular.

There are those who think that attendance at stated meetings is and will continue to be so small that it is unrealistic to accept the vote at a meeting as representative of the position of the Association. In other words, they think that committee action

should bind and represent the Association on all questions. I do not think so. I insist upon hoping that the tradition of this Association and of our democracy to debate important questions and reach sound decisions in open meetings may be preserved in this Association even if it is lost almost everywhere else. If you feel the same way about it you can conclusively answer the skeptics simply by coming to meetings.

2. I am not entirely satisfied with the make-up of all the committees. Some of them have been so active that by comparison others seem to do very much less than they ought to do. This would be discouraging if I did not think that the situation will be improved. If we can get the increased general interest in the activities of the Association which I have been talking about and can make the work of the committees more interesting and more important this problem will be solved. Given a really good committee it will see that something is accomplished and that its members get fun out of the work and the social contacts involved.

The initiation by a good many committees of the practice of having dinner served in the Supper Room, preceded by cocktails in the Main Hall, has had happy results. I hope it will be adopted by more committees. I also hope that it may be possible to serve a cocktail or two and a light buffet dinner at a moderate price before some, if not all, of the lectures. The Committee on the Post-Admission Legal Education joins in this hope.

This seems to be an appropriate time and place to call to the attention of the membership the resolution adopted by the Executive Committee on January 7, 1942 which reads as follows:

> "WHEREAS, it is desirable that there be a shorter degree of rotation in memberships upon the various committees of the Association than now exists, to the end that opportunity for service on committees may be available to a larger proportion of the members of the Association, it is
>
> RESOLVED, that it is the sense of the Executive Committee that, as a general rule, no one should serve for more than four consecutive years as a member of any one committee of the Association the membership of which is appointed by the President; and that the same time limit

should govern the service of chairmen of committees, except that, if a chairman appointed for a committee shall be already a member thereof, the length of time that he shall have served as a member need have no bearing on the number of consecutive years for which he may serve as Chairman.

The above is intended only to state a general rule, and not to indicate either that members or chairmen have any right to expect to be reappointed for the maximum periods above suggested, or that the President may not exceed them in particular cases, when in his opinion the interests of the Association require it."

Almost everyone is agreed that a rotation in membership on the committees is in the best interests of the Association and of its individual members. I applied the four year rule in the appointment of the committees last spring except where its application would have eliminated more than half of the members of the committee. I think that the application of the rule should be continued. Perhaps it might be well to go further and actually divide the committees into classes so that the term of office of a quarter or a third of each committee will automatically expire each year.

It is relevant here that my number one worry is the lack of interest on the part of younger members. Very few attend meetings or even entertainments. By younger men I mean those between 30 and 40. I find it hard to understand why, when it is known in advance that the so-called "veterans" of the Bar will speak, none of the young men care to listen. If it is a lack of respect for the old-timers and what they have to say, then is it not the duty of the juniors to turn up and do some talking themselves? I assure them of a welcome before the microphone and on committees. If two members want the floor simultaneously, generally speaking I will give it to the younger member. In making up the committees last spring I tried to put four men under forty on each of them. But I had difficulty in finding members who promised energy and enthusiasm, and in too many cases where the promise appeared it was not fulfilled.

In the practice of the law, the relationship between the older lawyer who furnishes the judgment and experience and the younger man who does the spade work and tries out new ideas is one of the pleasantest relationships and most effective combinations. There should be more of that sort of thing in bar association work. It has been secured in a small degree by some committee chairmen who have suggested the appointment on the committee, and perhaps as secretary, of a younger lawyer who is an office associate. This has worked well and it should be done more frequently.

My number two worry is the failure of younger lawyers to join the Association. We need many more of them. I do not believe that the answer lies in the organization of a separate junior group. Personally I dislike that segregation, and, at least in a local association, it tends to weaken the influence of each separate group and the association as a whole. Certainly the idea has not taken root in our Association, for the Committee on Junior Bar Activities has been inactive for several years. The mechanical work of finding new members is being done efficiently by the Committee on Increase of Membership. What that committee needs more than anything else are suggestions of particular individuals who ought to be, but are not, members. This is where everyone can help.

3. Efficiency is the child of interest and enthusiasm. If we can get a more interested and enthusiastic membership, there will be more efficiency throughout the work of the Association and as a result the action of the Association will carry more weight in the community. There are things which can be done and will be done to improve the mechanics of the work. Already the efforts of our Executive Secretary, Paul De Witt, have resulted in greatly improved newspaper publicity.

The mention of efficiency reminds me that the personnel at the House of the Association has shown plenty of it in the face of an increased burden of work done under difficulties. Somebody has calculated that the combined distance that the chairs

in the building have been moved by hand during the last three months is equal to the distance to Albany.

4. There are many things which the Association ought to do but has not yet undertaken. I have been disappointed in the crop of crack-pot ideas. I hope for a larger crop in the spring. According to the law of averages, every five crack-pot ideas have the makings of one constructive line of action. If we get more of the right sort of men on committees and secure a fast turn-over of them, innovations in many fields will follow. The Art Committee is a case in point. It conceived the idea of an art exhibit and staged the hanging of the Hollander Collection in the Supper Room. Almost everyone who came to the Lanny Ross concert on February 10 spent a few minutes enjoying this splendid collection of Eighteenth Century prints which included many by Cruickshank, Rowlandson and Roberts. On behalf of the Association I register its thanks to Mr. Barnett Hollander for this generous gift.

The color, warmth and humor of these prints may mark the dawning of a new day in the decorative life of the Association. The Art Committee, noting what a single coat of paint and a little color did to brighten up the atmosphere of the Supper Room, is now working out plans for the decoration of the rest of the second floor. Better lighting, fresh paint and new hangings are essential if the great fundamental beauty of those rooms is to be preserved to the eye of the present day lawyer, to say nothing of his wife. Other improvements in the House are future possibilities, but this is an immediate necessity. As soon as we know that we can rely on increased revenue by reason of new members and additional sustaining members, this work should be done.

As I said last spring, I want as much help as I can get and that is why I am laying these problems before the members.

HARRISON TWEED

*February 18, 1946*

# The Seventy-Fifth Anniversary of the Association

*A REMINDER AND A CHALLENGE*

By WILLIAM J. O'SHEA

Our Association was born some seventy-five years ago in the middle of the troubled decade following on the close of the Civil War—the so-called "Reconstruction Era." At that time Europe was beset by civil and international strife, and our country was racked and torn by financial and governmental scandals and turmoil, both national and local.

In that critical period the leaders of our profession, of both political parties, formed this Association in the belief, as expressed in the Call for Organization, that the "*organized* action and influence of the legal profession, properly exerted," would enable the bar in many ways to promote the interests of the public and at the same time sustain the profession in its proper position in the community.

Our founding fathers founded well, and in a short time the Association was able to wield an important and effective influence on the public life and on the laws of the city and state.

The first officers of the Association, William M. Evarts, Samuel J. Tilden, and Joseph S. Bosworth,—to mention only a few whose names are familiar to all,—directed the Association's activities into three main channels: first, to promote or oppose legislative measures as the interests of the public required; second, to secure the election or appointment of only properly qualified persons to judicial office; and, third, to purge the legal profession of unfit members.

These primary objectives have been pursued over the intervening years with success. The committees of the Association, notably the three senior committees, State Legislation, Grievances and Judiciary and some of the newer committees such as Law Reform, have done much to fulfill the original aims. Space does not permit

relating here the details of the struggles and accomplishments in the field of the amendment of the law, the maintenance of a high standard of judicial conduct, the disciplining of the bar, and the advancement of legal education, but it is the fact that it was the success of this Association,—the first or one of the first bar associations to be organized,—that inspired the formation of state and local bar associations throughout the country.

Most of our members are familiar with the library's outstanding collection of legal books and documents. But how many know of the public work of the Association in the past? Of its achievements? And of its failures? Of its present-day activities, carried on through forty-odd committees? An evening spent in the library browsing through the Year Books and old reports, would be far more interesting and rewarding than one would suppose.

Today as we emerge from another terrible war into a new era of reconstruction, we find the world in the throes of greater unrest and strife than seventy-five years ago. There is an urgent call for leadership; and leaders can learn much from a study of the past. So let our Anniversary Celebration be both a reminder and a challenge. A reminder of what the Association stands for and of its traditions and its achievements. A challenge to all of us to keep the old standards, but to raise them ever higher and to make ever more effective the "*organized* action and influence of the legal profession."

### *WHY A SEVENTY-FIFTH ANNIVERSARY CELEBRATION?*

By Otto C. Wierum

Certainly not as an occasion for self-praise. Nor even merely to make a record of achievement, however much of good the record may contain. It is altogether fitting that we should recall the good, but we shall err if we do not ask ourselves wherein we might have done better.

Our founders started out seventy-five years ago with high courage to do battle against entrenched iniquity on the bench and in the ranks of the bar. They won that fight and to it this

Association owes its birth. How many of us today know the story, or even the names, of the heroes of that fight? Not the least valid of the reasons for this Anniversary Celebration is that it gives opportunity and incentive to r ad, or reread, Sheldon's review of our birth and the first fifty years of our existence, which is to be republished and brought down to date.

What of the last twenty-five years?

Have we carried on the tradition?

Or have we been fearful when courage was demanded? Indifferent when we should have been active, smugly prosperous and contented in our splendid home, when we ought rather to have been in a state of wrath and indignation, for which there never lacks excuse?

Have we not often stayed our hand on the pretense that we must not engage in politics when we knew in our hearts that it was really because we did not want to imperil friendships or professional relationships? How many times—though not always—have we cast our net for the little fry and let the big fish swim away with impunity—and the spoils?

If there be ground for such charges, the writer as one of the blameworthy elders would say to his younger brethren:

"To you from failing hands we throw
the torch; be yours to hold it high."

# Resolutions Adopted by The Association at the Stated Meeting of February 13, 1946

### RESOLUTIONS INTRODUCED BY THE COMMITTEE ON LABOR AND SOCIAL SECURITY LEGISLATION

RESOLVED, that this Association favors legislation providing for the establishment of fact finding boards in cases where collective bargaining has failed to result in an agreement; the report of such fact finding board to be for the purpose of informing the public of the facts and of aiding the parties to the controversy to reach an agreement by collective bargaining but not for the purpose of arbitrating the dispute; such board to have subpoena powers; and neither the facts found nor the recommendations made by such board to be binding on the parties to the dispute.

RESOLVED, that this Association favors legislation providing that during the period necessary for a fact finding board to function there shall be neither a lock-out by the employer nor a strike by the employees; such legislation to contain the safeguards necessary to insure an expeditious report by the fact finding board and to provide that the prohibition against strikes shall not be operative unless the employer involved agrees that the provisions of the new collective bargaining agreement which may subsequently be entered into are made retroactive to the expiration of the expiring collective bargaining agreement or to the date when the fact finding board is appointed if there is no expiring collective bargaining agreement.

RESOLVED, that the Association does not favor legislation providing for the compulsory arbitration of the terms of a collective bargaining agreement.

RESOLVED, that the Association favors legislation providing for democratic procedures by labor unions; to prohibit unions

from placing unreasonable restraints on admission to membership; to require unions to elect officers at least once every four years, to render reasonable accountings to the membership at least once a year and to provide adequate machinery for a fair trial for a union member and for a fair hearing on appeal after such a trial before loss of membership and resulting deprivation of a job occurs; and providing that no union which fails to comply with such minimum democratic standards shall be permitted to have what is commonly known as a closed or Union shop.

RESOLVED, that the Association does not favor legislation withdrawing from employers whose employees are engaged in a strike the benefits of the carry-back provisions of the Internal Revenue Code.

RESOLVED, that the Association favors the strengthening and broadening of government mediation and conciliation services for the purpose of assisting employers and employees to bring collective bargaining negotiations to a successful conclusion.

RESOLVED, that the Association disapproves the enactment of the Case Labor Disputes bill as recently passed by the House of Representatives.

RESOLUTION INTRODUCED BY THE COMMITTEE ON LAW REFORM

WHEREAS Canon 30 of the Canons of Judicial Ethics provides, in part, as follows: "While holding a judicial position he [a judge] should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party"; and

WHEREAS Article VI, Section 19, of the Constitution of the State of New York provides, in part, as follows: "The judges of the court of appeals and the justices of the supreme court shall not hold any other public office or trust, except that they shall be

eligible to serve as members of a constitutional convention. All votes for any such judges or justices for any other than a judicial office or as a member of a constitutional convention, given by the legislature of the people, shall be void";

Now, therefore, be it

RESOLVED, that it is the sense of the Association of the Bar of the City of New York that said provisions of Canon 30 of the Canons of Judicial Ethics should be interpreted as applying to all holders of judicial offices in the State of New York, and as not being limited to the Judges of the Court of Appeals and the Justices of the Supreme Court; and be it

FURTHER RESOLVED, that no one, while holding any judicial office in the State of New York, ought to be permitted to become a candidate for any other office other than a judicial office.

To this Resolution by way of amendment the following was added on the motion of Bethuel M. Webster, chairman of the Executive Committee:

FURTHER RESOLVED, that the officers of the Association and the appropriate committees be instructed to interpret and enforce Canon 30 of the Canons of Judicial Ethics as applying to all holders of judicial offices in the State of New York and that, if necessary, such officers and committees should take action to secure an amendment to Article VI, Section 19 of the Constitution of the State of New York which would in effect extend the constitutional restriction now applicable to Judges of the Court of Appeals and Justices of the Supreme Court to all members of the judiciary in the State of New York.

### RESOLUTION APPROVING THE WILLIAMSON-REOUX JOINT RESOLUTION

RESOLVED that, The Association of the Bar of the City of New York endorses the Williamson-Reoux joint resolution for a constitutional amendment to provide for a court for the removal and retirement of judges, and strongly urges the adoption of the resolution by the Assembly and Senate of the State.

# Committee Reports

## THE EXECUTIVE COMMITTEE

### REPORT ON THE APPOINTMENT OF SECRETARIES TO JUDGES*
### APPROVED JANUARY 25, 1946

From a preliminary survey with respect to judges' secretaries and clerks in the Supreme Court for the first judicial district, the Court of General Sessions, and the City Court of the City of New York, the committee has reached the following conclusions:

1. Because of political pressures many judges feel compelled to appoint political leaders or workers as their secretaries. To surround a judge with such appointees is to invite litigants to seek their political leaders for favors in the court. It is also a well-known fact that in those courts where the judges cannot turn to the secretaries for legal assistance, they resort to seeking the help of some lawyer in private practice, with the result that litigants, knowing this fact, often seek out the lawyer whom the judge has selected to do work which should be performed by a secretary who is not engaged in private practice.

2. A secretary who has access to a judge's chambers and to his papers should be subject to disciplinary controls to the same degree as lawyers practicing before the court.

3. There can be no question that a secretary who has legal training is of greater value to a judge than one without such training. The salaries fixed for these positions, which salaries under the applicable statutes are determined by the judges themselves, are for the most part adequate to secure capable lawyers for these positions.

These considerations are supported by the following data, which has been developed by studies made by the sub-committee and by earlier studies made by the Committee on Courts of Superior Jurisdiction and the Committee on the City Court.

* The report was prepared by a special sub-committee and adopted as a report of the Executive Committee. At the same time the Committee adopted the resolution printed in the Activities Section of this number of THE RECORD.

*I. THE SUPREME COURT*

In the Supreme Court for the first judicial district all the secretaries to the judges are lawyers, except Mr. Isador Greenbaum, who is secretary to Justice Levy, Mr. Harry Brickman, secretary to Justice Greenberg, and Mr. Carmine DeSapio, secretary to Justice Louis A. Valente.

The salary, fixed by the justices in the First Department for their secretaries is $7,500 per year, an amount which, on its face, gives recognition to the specialized nature of the duties performed by the secretaries and the training required for the position. The salaries are patently in excess of salaries normally paid for the performance of ordinary clerical duties.

At the present time there is no provision in the law providing for the appointment of a "secretary" to a Supreme Court Justice. The term secretary is applied through common usage to the "clerk" appointed by each justice pursuant to provisions of Section 157 of the Judiciary Law. It is this section which the committee recommends should be amended. The committee recommends that the amendment limit the appointments to members of the bar and provide that the appointee should devote full time to the position. It should be noted in this connection that Rule 9 of the Special Rules of the Supreme Court, New York County, provides that no clerk to a justice of the Supreme Court shall act as attorney or counselor or participate directly or indirectly as such in any matter which is pending in any court in the First Department.

The proposed amendment, the committee believes, should affect the tenure of persons presently holding the position. In the bill presented to the last legislature by the Association's Committee on City Court there was a provision which protected present incumbents in the office. This provision was inserted because the City Court Committee felt that in such form the bill had a better chance of enactment. It is the committee's position that, however politically expedient such a provision might be, it would not be wise to compromise the Association's position by such a provision.

The history of the Association's interest in this matter goes back at least to 1939. In the Yearbook for that year, the following is included among the proposals submitted by the Committee on Law Reform to the Association:

> "4. A proposal that secretaries to judges be required to be lawyers and be prohibited from practicing law. This proposal was submitted in the alternative as a statute or court rule and the committee was authorized to endeavor to effect its adoption either by statute or court rule as the committee might consider proper."

The next activity of the Association was the bill sponsored by the Committee on City Courts, which bill had the favorable support of practically every bar association in the city, failed of enactment in the Assembly. The bill died in the Senate.

### *II. COURT OF GENERAL SESSIONS*

In the Court of General Sessions, out of nine secretaries, only four are members of the bar. The salaries for these secretaries are fixed at $5,750 per year. Seven of the secretaries are paid as a bonus an additional $350 per year. The amount of the salaries is fixed by the judges of the Court of General Sessions. (See Section 367 of the Judiciary Law.)

Section 55 of the Code of Civil Procedure provides for the appointments of the secretaries. It is this section which the committee recommends be amended.

### *III. CITY COURT OF THE CITY OF NEW YORK*

There are twenty-two justices of the City Court throughout the five divisions of the city: nine in New York County, five in Kings, four in the Bronx, three in Queens and one in Richmond.

Of the twenty-two secretaries to justices of the Court, only Mr. Justice Coleman in New York County has a lawyer for a secretary. A very large number of the twenty-one non-lawyer secretaries, representing both major political parties, are local district leaders or the husbands or wives of local district leaders.

Section 8 of the New York City Court Act provides for a legal

assistant (This means one legal assistant for the entire Court, although it has a division in each of the five counties of the City) to be appointed by the justices of the Court or a majority of them, and no one is eligible for such appointment unless he shall have been an attorney and counselor of the State in active practice for at least five years. Since only Justice Coleman in the New York County Division has a lawyer for a secretary, the justices in each of the other four divisions of the Court are without a single lawyer to aid them in their work.

Prior to 1945, the salaries of the judges' secretaries in the City Court were determined by the City of New York. Prior to the La Guardia administration the salaries had been $4,500; during the La Guardia administration the salaries were reduced to $3,500 and then to $2,400 per annum. Last year the Legislature amended Section 4 of the New York City Court Act so as to provide that each of the officers or employees of the Court appointed pursuant to Sections 8 and 10 shall receive as a salary "a sum to be fixed by the said Justices of the Court or a majority of them." Under well established legal precedents, when the justices have fixed the salaries, the city must appropriate the funds for payment thereof. Pursuant to the said legislative amendment of 1945, the justices of the Court have included in their budget for the new fiscal year a salary of $3,500 per annum for the secretaries to the justices.

In most cases the position of secretary to a justice of the Court is regarded as a sinecure. With very few exceptions, these personal secretaries are unable to perform such simple tasks as checking and running down citations. Many of them have not the slightest capacity to perform useful services for the judges, except perhaps to duplicate the work performed by the judges' attendants, even were they seriously disposed to perform any services whatever. It might be noted that each justice of the Court also has an attendant personally assigned to him in addition to the secretary. (Section 8 of the City Court Act refers to the secretaries of the justices as "clerks.")

Reference has already been made to the unsuccessful attempt

by the Committee on the City Court to obtain legislation which would require the secretaries to the judges of that court to be lawyers. Details may be found in the annual statement of President Wardwell in the 1944 Yearbook, page 178, and in the annual report of the Committee on City Courts at page 231 of the Association Yearbook of 1945.

## COMMITTEE ON PROFESSIONAL ETHICS

### OPINION ON PROFESSIONAL ANNOUNCEMENTS BY ATTORNEYS RETURNING TO PRIVATE PRACTICE FROM GOVERNMENT SERVICE

This committee has recently received a number of inquiries involving professional announcements by attorneys returning to private practice from government service.

These inquiries seem to have been prompted in large part by the recent publicity given to an opinion of the Committee on Professional Ethics of the New York State Bar Association which was publicized as relaxing the rules on professional announcements in favor of veterans. As we understand that opinion, however, the views therein expressed were intended to apply to all attorneys returning to private practice from any branch of government service, whether veterans or not. The opinion holds that the professional announcements of such attorneys may properly (a) state the division of the government service from which he has resigned; (b) state the branch of the law in which the attorney intends to engage, even though such branch is not a specialty within previously accepted definitions; and (c) be sent to members of the Bar known to the attorney and "to others who are entitled to the information" (N. Y. S. Bar Ass'n, Com. on Prof. Ethics, "Opinion as to Announcements," dated October 29, 1945).

As regards (a) and (b), the opinion referred to follows the views of the Committee on Professional Ethics of the New York County Lawyers' Association (N. Y. Co. Lawyers' Ass'n Year Book, 1944, p. 142). In these respects, the opinions of these two committees, as well as an earlier unpublished opinion of this committee (Opinion 149, re-numbered 912, March 29, 1944) are in conflict with the rulings of the Committee on Ethics and Grievances of the American Bar Association. That committee has ruled that an attorney returning to private practice from government service may not properly state the fact that he has been employed by a specified government department, and that except for certain limited branches of the law defined as specialties, the attorney

may not announce that he intends to specialize in particular fields of practice. (Prof. Ethics Com., A. B. A., Opinion No. 264, June 21, 1945).

Because of this conflict of opinion, and because the subject is especially recurrent in these times, this committee considers it to be its duty to re-examine the subject and to make a general statement of its views as to the proper scope of professional announcements by attorneys returning to private practice from government service. The inquiries which the committee has had involve the following questions:

(1) May such an announcement include a statement of the particular public office held by the attorney?

(2) May the announcement state that the attorney intends to specialize in practice before the government department or agency in which he held office?

(3) May it be stated that the attorney intends to specialize in a particular field of practice?

(4) To whom may such announcements be sent?

(5) Are there any special dispensations applicable to veterans in these respects?

I

In the committee's opinion, it is not improper for an attorney to state in his professional announcement the particular public office from which he is returning to private practice. Such a statement should not go beyond naming the department or agency of the government with which the attorney served and the title of the position which he held therein. The terms of the announcement and its physical setup should be such as to avoid any implication that the attorney is seeking to announce that he is specially qualified to handle matters dealt with by such agency or department or in which he gained experience while holding public

office. Examples of professional announcements which the committee regards as proper, are the following:

> "John Smith having resigned as Special Assistant to the Attorney General in the Anti-Trust Division of the Department of Justice, announces that he has joined the firm of X, Y & Z."
>
> "John Smith, having resigned as Assistant United States Attorney for the Southern District of New York, and Richard Roe, announce the formation of a partnership for the general practice of law."

II

The committee is of the opinion that it is improper for such an announcement to state or imply that the attorney intends to specialize in practice before the government department or agency in which he held office or that he is peculiarly qualified to do so.

III

The Committee on Ethics and Grievances of the American Bar Association has ruled that it is improper for an attorney to announce that he intends to practice a particular branch of the law unless it be a specialty (Opinions 175, 194, 228, 251 and 264). The only fields of practice thus far specifically regarded as specialties by the American Bar Association are admiralty, patents, copyrights and trademarks. It is recognized, however, that there may be others, depending upon the situation in the particular community involved.

The recent opinion of the Ethics Committee of the New York State Bar Association and the earlier opinions of the Ethics Committee of the New York County Lawyers' Association and of this committee, referred to above, depart from this rule, and hold that an attorney may properly announce that he intends to practice a particular branch of the law, whether it be a specialty or not.

After full reconsideration of the matter, this committee is of

the opinion that the stricter rule is the preferable one. It cannot escape the conclusion that to permit the indiscriminate announcement by attorneys of their intention to "specialize" in particular branches of the law opens the door to improper solicitation of business. This committee therefore concludes that it is improper for an attorney to announce that he will engage in a particular field of practice unless such field can be truly regarded as a specialty.

As to what may be considered a specialty, this committee does not regard the fields of practice approved by the American Bar Association as being exclusive. On the other hand, we think that the mere fact that an individual attorney may have gained through long experience exceptional proficiency in a particular field of practice, or the fact that such a field has become the exclusive professional occupation of a segment of the local bar, is not sufficient of itself to constitute that branch of the law a specialty. The committee thinks that the proper test to be applied in any given case is this: Is the branch of the law claimed to be a specialty one which the average lawyer in the community is not equipped and willing to handle and is so regarded by the customs and traditions of the community?

IV

Professional announcements may be sent to other attorneys, known or unknown to the attorney sending the announcement, and to persons and corporations either known to him or with whom his relationships are such as to make it appropriate that they should receive the attorney's announcement. No such announcement may be published, otherwise than in an approved law list.

V

In the opinion of the Committee, no special dispensations are applicable to veterans as such and as distinguished from attorneys returning to private practice from any branch of the Government service. While the Committee is sympathetic with all proper

means for aiding veterans in resuming the practice of law, such means should not violate the standards of professional conduct generally applicable to the legal profession.

Respectfully submitted,

COMMITTEE ON PROFESSIONAL ETHICS
OF
THE ASSOCIATION OF THE BAR OF THE
CITY OF NEW YORK

*Members of the Committee*

JOHN M. HARLAN, *Chairman*
HOWARD C. ANDERSON, JR.
CHAUNCEY BELKNAP
JULIAN N. GOLDMAN
LOUIS C. HAGGERTY
BERNARD HERSHKOPF
HORACE G. HITCHCOCK
SAMUEL H. KAUFMAN
CARROLL B. LOW
MARK W. MACLAY
EDWARD RAGER
LAWRASON RIGGS
RUSH TAGGART
JAMES N. VAUGHAN
ALEXANDER WILEY

## COMMITTEE ON
## UNLAWFUL PRACTICE OF THE LAW

### Report on

SECTION 6 (A), McCARRAN-SUMNERS BILL

S. 7 AND H.R. 1203, 79TH CONGRESS

The committee opposes only Subsection (a) of Section 6 of the bill and does not wish to express an opinion on the bill as a whole or with respect to its other provisions.

Subsection (a) of Section 6 of this bill reads as follows:

"(a) Appearance.—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel, *or if permitted by the agency, by other qualified representative.* Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the responsible conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding or in connection with any agency function, including stop-order or other summary actions. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding." (italics added)

It appears that the last sentence of this subsection confirms in various administrative agencies their present power and practice to grant or to deny the right of non-lawyers to appear before them

in a representative capacity. While this provision, therefore, maintains the status quo with respect to the practice of law by laymen before federal administrative agencies, the committee feels that any attempt to improve the judicial process in the quasi-judicial functions of federal administrative agencies, such as is being made by the McCarran-Sumners Bill, requires affirmative action in this regard, and the committee does not believe that the agencies should have the power to continue to admit laymen to practice before them.

We believe that it is contrary to the public interest that persons who are not lawyers represent others in proceedings before federal administrative agencies, where such representation actually constitutes the practice of law. Rights of an individual, under law, in many cases, are determined in the process of these agencies to the same extent as they are determined in the trial courts. Moreover, the courts will not review the facts as determined by an administrative agency if supported by substantial evidence, so that the record before the agency is often final and dispositive. A lawyer coming into the case upon appeal cannot present further or different evidence.

The committee understands that frequently, before formal proceedings are instituted in the various agencies, informal conferences are held when the person or company involved appears in person or by an employee. We can see no objection to this practice. It is only when the proceeding reaches a formal or hearing stage that we feel that the interested party should be represented by a member of the bar and not by an outside layman employed to perform what actually amounts to legal services.

The Committee on Unlawful Practice of the Law and similar committees of other bar associations, receive frequent and numerous complaints from persons who have been represented by laymen before administrative agencies. When the person complained of is found to have been admitted to practice before the agency in question, the bar is powerless to have him punished for misconduct or negligence, except that the complaint may be referred to the agency in the hope that the agency will take action.

Lawyers have their fitness and character examined before they are permitted to offer their services to the public and can be disciplined or disbarred for improper conduct. Laymen are permitted to advertise and to solicit business; lawyers are prohibited from these practices.

The conclusion is inescapable that the public and the agencies will be benefited by restricting the performance of legal work in the federal administrative agencies to lawyers, and the committee respectfully urges your support to that end.

Respectfully submitted,

COMMITTEE ON UNLAWFUL PRACTICE OF THE LAW
OF
THE ASSOCIATION OF THE BAR OF THE
CITY OF NEW YORK

*Members of the Committee*

L. REYNER SAMET, *Chairman*
PRESCOTT R. ANDREWS
FREEMAN J. DANIELS
EDWARD K. HANLON
RICHARD K. HINES
FREDERIC A. JOHNSON
WILLIAM LAWRENCE KING, JR.
MILTON N. MOUND
SIGOURNEY B. OLNEY
EDWIN M. OTTERBOURG
FREDERICK M. SCHLATER
NATHAN HUBBARD STONE
HAROLD J. TREANOR
GEORGE GRAYSON TYLER
GRAY WILLIAMS

## COMMITTEE ON LABOR AND SOCIAL SECURITY LEGISLATION

### REPORT ON THE CASE LABOR DISPUTES BILL

Supplementing the report of this Committee on the principles of the Ball-Hatch-Burton Bill, the Committee submits the following report on the Case Labor Disputes Bill which was introduced in and enacted by the House of Representatives subsequent to said report of this Committee:

The Committee, by unanimous vote at a meeting at which ten members were present, disapproves the enactment of the Case Labor Disputes Bill.

This bill was hastily drafted and hastily considered in the heat of widespread labor controversy. In the opinion of the Committee labor legislation involving substantial changes in substantive law and social and economic policy should have more mature and careful consideration. We find that in many respects the bill is poorly drafted; that in some respects it is inconsistent with the recommendations of this Committee in its report on the Ball-Hatch-Burton Bill; that in some respects it adopts proposals which were before this Committee in its consideration of the Ball-Hatch-Burton Bill but which were discarded as undesirable.

A few examples will suffice to illustrate the objections of the Committee to this bill:

1. The bill provides that

> "hereafter no supervisory employee shall have the status of an 'employee' for the purposes of Sections 7, 8, and 9 of the National Labor Relations Act."

In many industries it is established practice for foremen and supervisory employees of similar rank to be members of the same union and of the same bargaining unit as the employees they supervise. In still other industries independent foremen's associations have been formed which have had a record of satisfactory collective bargaining with their employers. The bill would thus destroy relationships which have been satisfactory in

operation and some of which are of long standing, and would relegate the foremen to bargaining with their employer on an individual basis. Apart from the question whether in the future supervisory employees should be permitted to bargain collectively, the Committee sees no need for disturbing existing relationships.

2. The bill contains various prohibitions against "Boycott and So Forth." These restrictions are so broadly drawn as to cut across many practices which the Committee believes should not be prohibited. The penalty prescribed for violation of such prohibitions seems to the Committee disproportionate. Violation of the prohibition against boycott by a labor union would entail loss of its status as a representative or labor organization under the National Labor Relations Act for a period of not less than ninety days nor more than six months. This loss of status is not related to the particular controversy in which the violation occurred. Thus, in the case of a boycott involving only one employer, a national union would forfeit its rights to represent its members in collective bargaining throughout the nation. The legal status of innumerable collective bargaining agreements would be brought into question. In the case of an individual who violates the prohibition against boycott, the Act provides that he "shall on and after such violation cease to have, and cease to be entitled to, the status of an employee for the purposes of Sections 7, 8, and 9 of the National Labor Relations Act * * *." There is no time limit upon such forfeiture of status, so that an individual who engaged in a boycott prohibited by the Act would thereafter, for the rest of his life, be deprived of all right to collective bargaining.

3. The Act provides for a cooling off period during which strikes are prohibited, but it does not contain the important qualification, which is recommended by this Committee in its report on the Ball-Hatch-Burton Bill, to the effect that such prohibition shall not be operative unless the employer agrees that the collective bargaining agreement subsequently entered into shall be given retroactive effect.

The Committee will make a further study of the principles involved in the Case Bill which were not covered in the report of the Committee on the Ball-Hatch-Burton Bill, and will render a subsequent report to the Association thereon. It desires, however, at this time to express its disapproval of the bill as enacted by the House of Representatives.

Respectfully submitted,

MORRELL S. LOCKHART
*Chairman*

*February 11, 1946.*

# The Library

SIDNEY B. HILL, Librarian

## *BRIEFS AND RECORDS*

A Court has defined a brief as "the vehicle of counsel to convey to the appellate court the essential facts of his client's case, a statement of the question of law involved, the law he would have applied, and the application he desires made of it by the court."[1]

The lawyer who is fortunate enough to have a large collection of briefs and records available to him will find it an invaluable source of information.

Since 1870 when the Library was formed, its staff has been charged with the task of assembling, indexing and binding briefs and records on appeal in New York State and Federal courts. The Library now has on its shelves about sixty-five thousand bound volumes of such briefs and records—a collection which is unexcelled by that of any other library and which is one of the most important research assets to the legal profession.

To make this part of our Library better known to the members of the Association, the following descriptive table of its holdings is presented.

## *FEDERAL COURTS*

| | |
|---|---|
| United States Supreme Court (1823–80 is fragmentary and incomplete) | 1823 to date |
| United States Circuit Court of Appeals | |
| 1st to the 9th Circuits (U. S. Circuit Court [old Circuit Court], 1st Circuit, 1869–78). | 1891 to date |
| 10th Circuit | 1928 to date |
| United States Court of Claims | 1869–1928 |
| United States Court of Customs and Patents Appeals | 1910 to date |
| United States Court of Emergency Appeals | 1944 to date |

[1] Bell v. Germain, 12 Cal. App. 375, 107 Pac. 630.

*COMMISSION*

| | |
|---|---|
| United States Interstate Commerce Commission | 1887–1928 |

*STATE COURTS*

| | |
|---|---|
| New York Court of Appeals (Also Commission Appeals, 1870–75) | 1852 to date |
| Court of Errors | 1836–1846 |
| Supreme Court, Appellate Division (1st to 4th Departments) | 1896 to date |
| Supreme Court, 1st Dept., General Term | 1849–1895 |
| Superior Court of the City of New York General Term | 1871–1892 |
| Supreme Court, Appellate Term | 1908 to date |

During the War the Library received some seventy-five hundred briefs and records averaging three documents for each case, approximating twenty-two thousand and five hundred papers to be arranged and handled by the staff. The transcript of the record in an average case is usually the equivalent in content to an average size book. In each bound volume of our collection will be found a number of different cases, the equivalent of several average size volumes.

As soon as the cases are released to the Library by the courts, they are temporarily indexed and immediately made available to the members. This necessitates additional searching and cross indexing by the Library staff after they are officially reported. Every reported decision in the above courts must be examined by a librarian before permanent indexing is done. A correct citation or name of the case is all that the Library requires to produce promptly any record in its collection.

Fully recognized as invaluable source material, the briefs and records are being constantly consulted by members of the bench and bar as well as by specialists and scholars outside of the profession. They have been found most useful not only to "Mr. Tutt" but to social scientists, engineers and legal and non-legal historians in their research problems.

The entire economic, political and legal history of this country is reflected in the litigation recorded in these files. Cases arising out of the Mexican War, Civil War and Indian Wars as well as the treason cases of World War II, the early income tax, prohibition and wire tapping cases and current problems are all preserved as landmarks for you today.

A Texas court has said with engaging frankness that the purpose of the brief on appeal is to enable the court to dispose of cases before it with the least labor and consumption of time. An attorney whose client's case is similar to some other case found in a previously reported decision will also find the collection a great labor and time saving device.

### *VETERANS*

On January 28th the Placement Office of the War Committee of the Bar of the City of New York moved its offices from the Bar Building to the main floor of the House of the Association. Since the establishment of its new quarters the Placement Office has interviewed on an average, thirty-six lawyer veterans each day. At the present time there are on file nearly eight hundred applications from veterans who are seeking employment in the legal field. Four full time employees are now administering the office. Returning these men to jobs in their profession is but one of the problems regarding veterans which deeply concerns the bar.

The Library is making an earnest effort to acquire for convenient use of the members all available official material issued by the Veterans Administration and other Federal and state agencies which will be helpful in determining rights and benefits of veterans and their families. Besides this official material there may be found in the Library the following unofficial publications which are of great assistance to the legal profession and all agencies serving the veterans:

American Bar Association.

Compendium of Laws relating to Problems of Men in the Armed Forces, with Amendments to January 1, 1945, and in-

cluding Supplement on Domestic Relations and Notes on the Law of Domestic Relations in the Provinces of Canada and the Matrimonial Causes Act, November 1944, of England.

Kimbrough, R. T. and Glenn, J. A.

American Law and Veterans. An Encyclopedia of the Rights and Benefits of Veterans of World War II and their Dependents, with Statutes, Regulations, Forms and Guide to Procedure. Lawyers Cooperative Publishing Company, 1946.

(This publication just off the press explains all the benefits, rights and privileges provided by the Federal Government for Veterans of World War II and their dependents. It also discusses general principles of law and the rights and immunities which exist independently of statute and which are in some degree distinctive to veterans. The veterans' laws of the several states are summarized according to jurisdiction. It provides pocket supplements to keep it currently up to date and is an exhaustive and thorough compilation and speedy reference tool for any agency assisting veterans.)

West Publishing Company.

Veterans Benefits 1946, with foreword by U. S. Veterans Administrator Omar N. Bradley.

(This is a publication containing laws, regulations and construction thereof, and with the two items above it covers almost any problem of the veteran or his dependents.)

May we call to the attention of members the Veterans Service Center at 500 Park Avenue where there are skilled interviewers representing the Board of Education, the Civil Service Commission, the United States Employment Service and the Bureau of Internal Revenue to assist veterans.


CHARTERED 1853

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